

Histopathological Effects of Monosodium Methanearsonate (MSMA) on New Zealand White Rabbits (*Oryctolagus cuniculus*). *Bull. Environ. Contam. Toxicol.* 42:289-293.

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(19) U.S. Environmental Protection Agency. (1989) Data Evaluation Report: Methanearsonic Acid Fifty Two Week Chronic Oral Toxicity Study in Beagle Dogs. MRID No. 405461-01/412664-01.

(20) U.S. Environmental Protection Agency. (1986) Data Evaluation Report: Methanearsonic Acid Teratology Study in the Rabbit. MRID No. 159390-01.

(21) U.S. Environmental Protection Agency. (1994) Data Evaluation Report: a Two Generation Reproduction Study in Rats with Methanearsonic Acid (MAA). MRID No. 431783-01.

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(23) U.S. Environmental Protection Agency. (1994) Carcinogenicity Peer Review Document for Cacodylic Acid.

(24) U.S. Environmental Protection Agency. (1991) Data Evaluation Report: Monosodium Methane Arsonate (MSMA); Avian Single Dose Oral LD₅₀ Test (Bobwhite Quail). MRID No. 416100-02.

(25) Moffett, J.O., Morton, H.L., MacDonald, R.H. (1972) Toxicity of Some Herbicidal Sprays to Honey Bees. *J. Econ. Entomol.* 65:32-36.

(26) Morton, H.L., Moffett, J.O., MacDonald, R.H. (1972) Toxicity of Herbicides to Newly Emerged Honey Bees. *Environ. Entomol.* 1:102-104.

(27) Hazard Assessment Guidelines for Listing Chemicals on the Toxic Release Inventory. Revised Draft (May 26, 1992). Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency.

(28) Eisler, R. (1988) Arsenic Hazards to Fish, Wildlife, and Invertebrates: A Synoptic Review. Dept. of the Interior, U.S. Fish Wildl. Serv. Biol. Rep. 85(1.12).

(29) Menzer, R.E. (1991) Water and Soil Pollutants. In: Amdur, M.O., Doull, J. Klaassen, C.D. eds., Casarett and Doull's Toxicology, The Basic Science of Poisons. Fourth Edition. Pergamon Press: New York; pp. 891-893.

(30) Toxicological Profile For Arsenic. Agency for Toxic Substances and Disease Registry (ATSDR) Report No. ATSDR/TP-92/02; pp. 99-108.

(31) Woolson, E.A. (1977) Fate of Arsenicals in Different Environmental Substrates. *Environmental Health Perspectives* 19:73-81.

(32) Seventh Annual Report on Carcinogens: 1994 Summary. United States Department of Health and Human Services, National Toxicology Program; pp. 21-26.

VI. Administrative Record

The record supporting this decision is contained in docket control number OPPTS-400092. All documents, including an index of the docket, are available to the public in the TSCA NonConfidential Information Center (NCIC), also known as the Public Docket Office, from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA NCIC is located at EPA Headquarters, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: April 14, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 503, 505, 506, 507, 552, and 570

[GSAR Notice 5-399]

RIN-AF67

General Services Administration Acquisition Regulation; Leasing Real Property

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) invites written comments on a proposal to amend the General Services Administration Acquisition Regulation (GSAR) to implement various provisions of the Federal Acquisition Streamlining Act of 1994 as they apply to the acquisition of leasehold interests in real property and to implement recommendation of a GSA process re-engineering team for streamlining and/or improving the lease acquisition process.

DATES: Comments on the proposed rule should be submitted by June 19, 1995 to

be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to Ms. Marjorie Ashby, General Services Administration, Office of GSA Acquisition Policy, 18th & F Streets, NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Tom Wiznowski, Office of GSA Acquisition Policy, (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule implements several provisions of the Federal Acquisition Streamlining Act (FASA), Pub. L. 103-355, October 13, 1994 as it applies to the acquisition of leasehold interests in real property. Most of the provisions of FASA which are implemented in the Federal Acquisition Regulation (FAR) will also apply to leases of real property because the GSAR incorporates provision of the FAR that apply to leases of real property by reference. Other provisions of FASA are unique to leases of real property and are addressed in Part 570 of the GSAR. The most significant provisions of FASA that are implemented through changes in Part 570 are:

(1) Section 4402 of FASA amended the Federal Property and Administrative Services Act to authorize the Administrator of General Services to prescribe regulations that provide special simplified procedures for acquisitions of leasehold interests in real property at rental rates that do not exceed the simplified acquisition threshold. For purposes of establishing such procedures the rental rate or rates under a multiyear lease do not exceed the simplified acquisition threshold if the average annual rent payable for the period of the lease does not exceed the simplified acquisition threshold (\$100,000).

(2) Section 1061 of FASA amended the Federal Property and Administrative Services Act to provide for disclosure of all significant evaluation factors and subfactors and to provide for disclosure to offerors whether all evaluation factors other than cost or price, when combined, are significantly more important than cost or price; approximately equal in importance to cost or price; or significantly less important than cost or price.

(3) Section 1063 of FASA amended the Federal Property and Administrative Services Act to provide for notification, in writing or by electronic means, of award to unsuccessful offerors within 3 days after the date of contract award.

(4) Section 1064 of FASA amended the Federal Property and Administrative Services Act to provide for post-award debriefings and outlined information to be disclosed in such debriefings. The law also provides for each solicitation for competitive proposals to include a statement that described the information that may be disclosed in post-award debriefings.

This proposed rule also implements several recommendations made by a GSA process re-engineering team for improving the procedures for acquiring leasehold interests in real property.

B. Executive Order 12866

This proposed rule was submitted to the Office of Management and Budget under Executive Order 12866.

C. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because it will have a beneficial impact on all offerors, including small business concerns. The proposed rule substantially simplifies the acquisition process for leases of real property entered into by the General Services Administration making it easier for offerors to do business with GSA. An Initial Regulatory Analysis has, therefore, not been performed. Comments from small entities concerning this proposed rule will be considered in accordance with 5 U.S.C. 610.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3502, et seq.

List of Subjects in 48 CFR Parts 501, 503, 505, 506, 507, 552, and 570

Government procurement.

Accordingly, it is proposed that 48 CFR Parts 501, 503, 505, 506, 507, 552, and 570 are amended as follows:

1. The authority citation for 48 CFR Parts 501, 503, 505, 506, 507, 552, and 570 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

2. Section 501.103 is amended by revising paragraph (b) to read as follows:

501.103 Applicability.

* * * * *

(b) Parts 501, 502, 503, 505, 506, 519, 530, 533, 552, 553 and 570; part 504, subparts 504.2 and 504.9; part 509, subpart 509.4; part 515, subpart 515.1; part 522, subparts 522.8, 522.13, and 522.14; and part 532, subparts 532.1, 532.4, 532.6, 532.8 and 532.9 apply to leases of real property. Other provisions of the (GSAR) 48 CFR Chapter 5 do not apply to leases of real property unless a specific cross-reference is made in part 570.

* * * * *

PART 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTERESTS

3. Section 503.104–10 is amended by revising paragraph (a) and (b)(3) to read as follows:

503.104–10 Solicitation provisions and contract clauses.

(a) The contracting officer may insert the provision at 552.203–71, Prohibited Conduct, in solicitations for the acquisition of leasehold interests in real property if there is a need to inform prospective offerors of certain conduct which is prohibited by law.

(b) * * *

(3) Simplified procedures are being used (see 570.2).

* * * * *

PART 505—PUBLICIZING CONTRACT ACTIONS

4. Section 505.101 is amended by revising paragraph (c) introductory text and (c)(2) to read as follows:

505.101 Methods of disseminating information.

* * * * *

(c) Unless exempt under (FAR) 48 CFR 5.202 or 505.202, proposed acquisitions must be publicized in local newspapers or posted on GSA's electronic bulletin board for acquisition programs (To access, set your communications software to 9600 or lower baud, no parity, 8 data bits, and 1 stop bit. Dial 816–926–3387) when the acquisition is for:

* * * * *

(2) Leasehold interests in real property and exceeds the simplified lease acquisition threshold (see 570.102).

5. Section 505.202 is amended by revising paragraph (a) introductory text and by removing paragraph (b)(1) and redesignating paragraphs (b)(2) and (b)(3) as (b)(1) and (b)(2) to read as follows:

505.202 Exceptions.

* * * * *

(a) Advertising in local newspapers or posting on GSA's electronic bulletin board for acquisition programs (To access, set your communications software to 9600 or lower baud, no parity, 8 data bits, and 1 stop bit. Dial 816–926–3387) is more appropriate than synopsizing in the *Commerce Business Daily* (CBD) for proposed acquisitions of—

* * * * *

6. Section 505.203 is amended by inserting the words “or be posted on GSA's electronic bulletin board for acquisition programs” in paragraph (a) introductory text immediately following the word “newspapers” and by revising paragraph (b) to read as follows:

505.203 Publicizing and response time.

* * * * *

(b) The publicizing and response times in paragraph (a) do not apply to proposed acquisition of leasehold interests in real property being conducted using simplified lease acquisition procedures (see 570.2). In such cases, the contracting officer may establish response times appropriate for the individual acquisitions involved.

PART 506—COMPETITION REQUIREMENTS

7. Section 506.001 is added to read as follows:

506.001 Applicability.

This part and (FAR) 48 CFR Part 6 do not apply to acquisitions of leasehold interests in real property awarded using the simplified procedures of part 570, subpart 570.2.

PART 507—ACQUISITION PLANNING

8. Section 507.100 is removed.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Section 552.270–1 is amended to revise the prescription for use of the provision to read as follows:

552.270–1 Preparation of offers.

As prescribed in 570.702, insert the following provision:

* * * * *

10. Section 552.270–2 is amended to revise the prescription for use of the provision to read as follows:

552.270–2 Explanation to prospective offerors.

As prescribed in 570.702, insert the following provision:

* * * * *

11. Section 552.270-3 is amended by revising the prescriptive language before the provision, by revising the date of the provision, by revising paragraph (a) introductory text of the provision, and by adding an Alternate I to read as follows:

552.270-3 Late submissions, modifications, and withdrawals of offers.

As prescribed in 570.702, insert the following provision:

Late Submissions, Modifications, and Withdrawals of Offers (XXX 1995)

(a) Any offer received at the office designated in the solicitation after the exact time specified for receipt of initial offers will not be considered unless it is received before award is made and it—

* * * * *

Alternate I (XXX 1995)

As prescribed in 570.702, substitute the following paragraph for paragraph (a) of the basic clause:

(a) Any offer received at the office designated in the solicitation after the exact time specified for receipt of best and final offers will not be considered unless it is received before award is made and it—

12. Section 552.270-4 is amended to revise the prescription for use of the provision to read as follows:

552.270-4 Historic preference.

As prescribed in 570.702, insert the following provision:

* * * * *

13. Section 552.270-5 is amended to revise the prescription for use of the provision to read as follows:

552.270-5 Lease award.

As prescribed in 570.702, insert the following provision:

* * * * *

14. Section 552.270-6 is amended to revise the prescription for use of the provision to read as follows:

552.270-6 Parties to execute lease.

As prescribed in 570.702, insert the following provision:

* * * * *

15. Section 552.270-10 is amended to revise the prescription for use of the clause to read as follows:

552.270-10 Definitions.

As prescribed in 570.703, insert the following provision:

* * * * *

16. Section 552.270-11 is amended to revise the prescription for use of the clause to read as follows:

552.270-11 Subletting and assignment.

As prescribed in 570.703, insert the following provision:

* * * * *

17. Section 552.270-12 is amended to revise the prescription for use of the clause to read as follows:

552.270-12 Maintenance of building and premises—Right of entry.

As prescribed in 570.703, insert the following provision:

* * * * *

18. Section 552.270-13 is amended to revise the prescription for use of the clause to read as follows:

552.270-13 Fire and casualty damage.

As prescribed in 570.703, insert the following provision:

* * * * *

19. Section 552.270-15 is amended to revise the prescription for use of the clause to read as follows:

552.270-15 Compliance with applicable law.

As prescribed in 570.703, insert the following provision:

* * * * *

20. Section 552.270-16 is amended to revise the prescription for use of the clause to read as follows:

552.270-16 Inspection—Right of entry.

As prescribed in 570.703, insert the following provision:

* * * * *

21. Section 552.270-17 is amended to revise the prescription for use of the clause to read as follows:

552.270-17 Failure in performance.

As prescribed in 570.703, insert the following provision:

* * * * *

22. Section 552.270-18 is amended to revise the prescription for use of the clause to read as follows:

552.270-18 Successors bound.

As prescribed in 570.703, insert the following provision:

* * * * *

23. Section 552.270-19 is amended to revise the prescription for use of the clause to read as follows:

552.270-19 Alterations.

As prescribed in 570.703, insert the following provision:

* * * * *

24. Section 552.270-20 is amended to revise the prescription for use of the clause to read as follows:

552.270-20 Proposals for adjustment.

As prescribed in 570.703, insert the following provision:

* * * * *

25. Section 552.270-21 is amended by revising the date of the provision and paragraph (a) to read as follows:

552.270-21 Changes.

* * * * *

Changes (APR 1995)

(a) The Contracting Officer may at any time by written order, with the consent of the Lessor, make changes within the general scope of this lease in any one or more of the following:

- (1) Specifications (including drawings and designs);
- (2) Work or services;
- (3) Facilities or space layout; or
- (4) Amount of space.

* * * * *

26. Section 552.270-22 is amended to revise the prescription for use of the clause to read as follows:

552.270-22 Liquidated damages.

As prescribed in 570.703, insert the following provision:

* * * * *

27. Sections 552.270-23 and 552.270-24 are removed and reserved.

28. Section 552.270-25 is amended to revise the prescription for use of the clause to read as follows:

552.270-25 Adjustment for vacant premises.

As prescribed in 570.703, insert the following provision:

* * * * *

29. Section 552.270-27 is amended to revise the prescription for use of the clause to read as follows:

552.270-27 Delivery and condition.

As prescribed in 570.703, insert the following provision:

* * * * *

30. Section 552.270-28 is amended to revise the prescription for use of the clause to read as follows:

552.270-28 Default in delivery—Time extensions.

As prescribed in 570.703, insert the following provision:

* * * * *

31. Section 552.270-30 is amended to revise the prescription for use of the clause to read as follows:

552.270-30 Progressive occupancy.

As prescribed in 570.703, insert the following provision:

* * * * *

32. Section 552.270-31 is amended to revise the prescription for use of the clause to read as follows:

552.270-31 Measurement for payment.

As prescribed in 570.703, insert the following provision:

* * * * *

Section 552.270.32 is amended to revise the prescription for use of the clause to read as follows:

552.270-32 Effect of acceptance and occupancy.

As prescribed in 570.703, insert the following provision:

* * * * *

34. Section 552.270-33 is amended to revise the prescription for use of the clause to read as follows:

552.270-33 Default by lessor during the term.

As prescribed in 570.703, insert the following provision:

* * * * *

35. Section 552.270-34 is amended to revise the prescription for use of the clause to read as follows:

552.270-34 Subordination, nondisturbance and attornment.

As prescribed in 570.703, insert the following provision:

* * * * *

35a. Section 552.270-35 is amended to revise the prescription for use of the clause to read as follows:

552.270-35 Statement of lease.

As prescribed in 570.703, insert the following provision:

* * * * *

36. Section 552.270-36 is amended to revise the prescription for use of the clause to read as follows:

552.270-36 Substitution of tenant agency.

As prescribed in 570.703, insert the following provision:

* * * * *

37. Section 552.270-37 is amended to revise the prescription for use of the clause to read as follows:

552.270-37 No waiver.

As prescribed in 570.703, insert the following provision:

* * * * *

38. Section 552.270-38 is amended to revise the prescription for use of the clause to read as follows:

552.270-38 Integrated agreement.

As prescribed in 570.703, insert the following provision:

* * * * *

39. Section 552.270-39 is amended to revise the prescription for use of the clause to read as follows:

552.270-39 Mutuality of obligation.

As prescribed in 570.703, insert the following provision:

* * * * *

40. Section 552.270-40 is amended to revise the prescription for use of the clause to read as follows:

552.270-40 Asbestos and hazardous waste management.

As prescribed in 570.703, insert the following provision:

* * * * *

PART 570—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY

41. Section 570.102 is amended by removing the definitions of "Fair Rental" and "Rent and related services" and by adding definitions for "Rent" and "Simplified leasing acquisition threshold" to read as follows:

570.102 Definitions.

* * * * *

Rent means the amount of consideration to be paid by the Government for use of land and buildings, or portions of buildings, under the lease, excluding the cost of any services such as heat, light, water, and janitorial service.

Simplified leasing acquisition threshold means \$100,000 average annual rent for the term of the lease, including option periods.

* * * * *

42. Section 570.104 is removed.

43. Section 570.105 is redesignated as 570.104 and revised to read as follows:

570.104 Competition.

Unless the simplified procedures in 570.2 are used, the competition requirements of (FAR) 48 CFR Parts 6 and 506 apply to the acquisition of leasehold interests in real property.

44. Subpart 570.2 is revised to read as follows:

Subpart 570.2—Simplified Lease Acquisition Procedures

570.201 Definitions.

570.202 Purpose.

570.203 Policy.

570.204 Procedures.

570.204-1 Market survey.

570.204-2 Competition.

570.204-3 Soliciting offers.

570.204-4 Negotiation and award.

570.204-5 Inspection.

570.201 Definitions.

Simplified lease acquisition procedures mean the procedures described in this subpart for awarding leases with annualized rent at or below the simplified acquisitions threshold of \$100,000, including options.

570.202 Purpose.

The purpose of this subpart is to prescribe simplified procedures for small leases in order to reduce administrative costs while providing for the efficient and economical acquisition of leasehold interests in real property.

570.203 Policy.

Simplified lease acquisition procedures should be used to the maximum extent practicable for actions at or below the simplified lease acquisition threshold.

570.204 Procedures.**570.204-1 Market survey.**

A market survey should be conducted to identify potential sources. The contracting officer may use information available within GSA or from other available sources to identify locations that will meet the Government's minimum requirements.

570.204-2 Competition.

(a) When the lease is not expected to exceed the simplified lease acquisition threshold, the solicitation of at least three sources is considered to promote competition to the maximum extent practicable. When repeated requirements for space occur in the same market, and if practicable, two sources not included in the most recent solicitation should be invited to submit offers.

(b) If only one source is solicited, the file should be documented with an explanation for the lack of competition.

570.204-3 Soliciting offers.

(a) Offers should be solicited by presenting each prospective offeror with a proposed short form lease or SFO which identifies all factors, including price or cost, and any significant subfactors that will be considered in awarding the lease and which states the relative importance the Government places on the evaluation factors or subfactors. In describing the evaluation factors to be considered, the solicitation shall clearly disclose whether all evaluation factors other than cost or price when combined, are significantly more important than cost or price; approximately equal in importance to cost or price; or significantly less important than cost or price. The offerors must be informed of minimum requirements that apply to particular evaluation factors and significant subfactors.

(b) The proposed lease or SFR should describe the Government's requirements and include, either in full text or by reference, applicable FAR provisions and contract clauses required by 570.701 and applicable GSAR provisions and clauses required by 570.702 and 570.703.

(c) Generally, the following items should be reviewed with prospective offerors:

(1) Measurement of space and the amount of space offered;

(2) Alterations or modifications, if any, to be made by the offeror as part of the rent;

(3) Overtime rate (if needed);

(4) Level and frequency of service and maintenance;

(5) Rental;

(6) Rates for utility and service operating cost, if applicable;

(7) Percentage of occupancy of the building, if a tax adjustment clause is included; and

(8) Unit priced items (e.g., electrical and telephone outlets) if included in the lease.

(d) Following review, prospective offerors should be instructed to complete the appropriate sections of the lease or SFO and submit the proposed lease or offer to the Government by a designated time established for receipt of offers.

570.204-4 Negotiation and award.

Offers should be evaluated in accordance with the solicitation. The contracting officer should evaluate the price and document the lease file to demonstrate that the proposed contract prices represent fair and reasonable prices. In cases where the total cost exceeds \$500,000 cost and pricing data must be obtained unless the requirement is waived or one of the exemptions at (FAR) 48 CFR 15.804-2 applies. The market price exemption from submission of cost or pricing data may be applied to proposed leases where there is evidence that the price is based on an established market price for similar space leased to the general public. A market survey and/or an appraisal conducted in accordance with accepted real property appraisal procedures may be used as evidence to establish the market price. An acceptable small business subcontracting plan must be provided if the lease will exceed \$500,000, unless the lease will be awarded to a small business concern. Negotiations, if applicable, should be conducted in accordance with 570.305. For leases expected to exceed \$100,000, a Certificate of Procurement Integrity must be provided to the proposed successful offeror for completion and submission before award. The contracting officer should review the List of Parties Excluded from Procurement or Nonprocurement Programs, to ensure the proposed awardee is eligible to receive the award and is otherwise responsible before awarding the lease.

570.204-5 Inspection.

The space must be inspected to ensure that it is in substantial

compliance with the Government's requirements and specifications before acceptance by the contractor officer. The contract file must be documented accordingly.

45. Subpart 570.3 is revised to read as follows:

Subpart 570.3—Procedures for Contracting for Leasehold Interests in Real Property

- 570.301 Market surveys.
- 570.302 Publicizing/Advertising.
- 570.303 Solicitation for offers (SFO).
- 570.304 Changes to SFO's.
- 570.305 Negotiations.
- 570.306 Evaluating offers.
- 570.307 Late offers, modifications of offers, and withdrawals of offers.
- 570.308 Preaward requirements.
- 570.308-1 General.
- 570.308-2 Cost or pricing data.
- 570.308-3 Proposal evaluation.
- 570.308-4 Responsibility determinations.
- 570.309 Award.
- 570.310 Debriefings.
- 570.311 Inspection.

570.301 Market surveys.

A market survey should be conducted to identify potential sources. The Contracting officer may use information available within GSA or from other available sources to identify locations that will meet the Government's minimum requirements.

570.302 Publicizing/Advertising.

(a) Leasing actions expected to exceed the simplified lease acquisition threshold must be publicized in local newspapers or be posted on GSA's electronic bulletin board for acquisition programs unless exempt under (FAR) 48 CFR 5.202 or 505.202.

(b) When the Government intends to acquire a leasehold interest in a building to be constructed on a preselected site, the proposed acquisition must be synopsized in the Commerce Business Daily (CBD).

570.303 Solicitation for offers (SFO).

(a) The SFO is the basis for the entire lease negotiation process and must be made a part of the lease. SFO's must contain the information necessary to enable the prospective offeror to prepare a proposal. Each solicitation, as a minimum, must—

- (1) Be in writing.
- (2) Contain a description of the minimum requirements of the Government, including—
 - (i) A description of the required space.

(ii) Specifications. The type of specification will depend upon the nature of the space needed by the agency and the market available to

satisfy the needs. Specifications may be stated in terms of function, performance, or design requirements. The specification must be drafted to promote full and open competition and include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency or as authorized by law.

(iii) Any special requirements.

(iv) A delivery schedule.

(3) State the method to be used to measure space.

(4) Specify a date and place for the submission of offers.

(5) Indicate how offers will be evaluated.

(6) Indicate how offers are to be structured.

(7) Identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the lease and state the relative importance the Government places on those evaluation factors and subfactors. In describing the evaluation factors to be considered, the solicitation shall clearly disclose whether all evaluation factors other than cost or price when combined, are significantly more important than cost or price; approximately equal in importance to cost or price; or significantly less important than cost or price. Numerical weights, which may be employed in the evaluation of proposals, need not be disclosed in solicitations. The solicitation must inform offerors of minimum requirements that apply to particular evaluation factors and significant subfactors. The other factors that will be considered in evaluating proposals should be tailored to each acquisition and include only those factors that will have an impact on the award decision. The evaluation factors that apply to an acquisition and the relative importance of those factors are within the broad discretion of the contracting officer. However, price or cost to the Government must be included as an evaluation factor in every case. Other evaluation factors that may apply to a particular acquisition are the availability of public transportation, the availability of adequate food service within a reasonable distance, the neighborhood and building quality, the availability of daycare and physical fitness facilities, and any other relevant factors.

(8) Include a statement outlining the information that may be disclosed in postaward debriefings.

(9) Include appropriate forms as prescribed in part 570, subpart 570.8.

(b) The SFO must be released to all prospective offerors at the same time.

570.304 Changes to SFO's.

(a) When the Government's requirements change (either before or after receipt of proposals), the solicitation must be amended in writing.

(b) When time is of the essence, information on modifications may be provided orally if—

(1) The modifications are not complex;

(2) A record is made of the information provided;

(3) All offerors or prospective offerors are given notice on the same day, if possible; and

(4) The information provided orally is promptly confirmed by a written amendment.

(c) When modifications in the Government's requirements occur, the following procedures apply—

(1) If proposals have not been submitted, amendments must be sent to all offerors solicited.

(2) If proposals have been received but not evaluated, the amendments must be sent to all of the offerors.

(3) If a modification is so substantial that it requires a complete revision of the solicitation, the solicitation should be canceled and a new solicitation issued.

570.305 Negotiations.

(a) Negotiations will be conducted with all offerors that are within the competitive range. The contracting officer shall determine the competitive range on the basis of cost and other factors that were stated in the solicitation and shall include in the competitive range all offers that have a reasonable chance of being selected for award.

(b) The content and extent of the negotiations are a matter of the contracting officer's judgment based on the particular facts of each acquisition. The contracting officer shall—

(1) Control all discussions;

(2) Advise the offeror of deficiencies in its offer so that the offeror is given an opportunity to satisfy the Government's requirements;

(3) Attempt to resolve any uncertainties concerning the offer;

(4) Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offerors' proposals or the evaluation process; and

(5) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its offer that may result from the discussion.

(c) No indication may be given to any offeror of a price which must be met since such practice constitutes an

auction technique that is prohibited. Likewise, no offeror should be advised of its relative standing with other offerors.

(d) After receipt of offers, no information regarding the number or identity of the offerors participating in the negotiation may be made available to anyone whose official duties do not require such knowledge.

(e) Negotiations must be closed by establishing a date and time for closing of negotiations and requesting in writing that offerors submit a "best and final offer" by that date.

(f) Negotiations may not be conducted after the closing date for best and final offers unless negotiations are reopened with all offerors in the competitive range.

(g) Negotiations are confidential and must reflect complete agreement on all items and conditions of the lease contract. Information regarding the transaction will not be announced or made available until after the contract is awarded.

(h) A written negotiation record should be placed in the lease file.

570.306 Evaluating offers.

(a) An abstract of final offers may be prepared to aid in the analysis of offers received.

(b) Offers will be evaluated in accordance with the SFO.

570.307 Late offers, modifications of offers, and withdrawals of offers.

Offers determined to be received late will be considered under (FAR) 48 CFR 15.412.

570.308 Preaward requirements.**570.308-1 General.**

(a) If an offeror answers affirmatively on the Contingent Fees Representation and Agreement, in order to comply with the warranty requirement of 41 U.S.C. 254(a), the requirements of (FAR) 48 CFR part 3, subpart 3.4 and part 503, subpart 503.4 must be followed for leasing actions expected to exceed the simplified lease acquisition threshold.

(b) Other applicable certifications should be reviewed for compliance with regulations.

570.308-2 Cost or pricing data.

(a) Cost or pricing data are required under the circumstances described in (FAR) 48 CFR 15.804-2.

(b) The exemptions from and waivers of submission of certified cost or pricing data are outlined in (FAR) 48 CFR 15.804-3. The competition exemption applies when adequate price competition, as defined in (FAR) 48 CFR 15.804-3(b), is obtained. The market

price exemption from submission of cost or pricing data may be applied to proposed leases where there is evidence that the price is based on an established market price for similar space leased to the general public. A market survey and/or an appraisal conducted in accordance with accepted real property appraisal procedures may be used as evidence to establish the market price. The contracting officer may grant an exemption and need not require the prospective lessor to submit a Standard Form 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, when there is evidence, before solicitation, that there is an acceptable established market price (see (FAR) 48 CFR 15.804-3(e)(3)).

(c) In exceptional cases, the requirement for submission of certified cost or pricing data may be waived under (FAR) 48 CFR 15.804-3(i) and 515.804-3.

(d) When certified cost or pricing data is required, the contracting officer shall follow the procedural requirements in (FAR) 48 CFR 15.804-6(e).

(e) If the proposed lessor refuses to provide the data when required, the contracting officer shall follow the procedures in (FAR) 48 CFR 15.804-6(e) and 515.804-6.

570.308-3 Proposal evaluation.

(a) Offers should be evaluated in accordance with the solicitation. The contracting officer should evaluate the price and document the lease file to demonstrate that the proposed contract prices represent fair and reasonable prices.

(b) The lease file should also document the evaluation of other award factors listed in the solicitation. The file should include the basis for evaluation, an analysis of each offer, and a summary of findings.

570.308-4 Responsibility determinations.

(a) The contracting officer shall make a determination that the prospective offeror is responsible with respect to the lease being considered. The contracting officer's signature on the contract is deemed to be an affirmative determination. When an offeror is found to be nonresponsible, the contracting officer shall make, sign and place in the contract file a determination of nonresponsibility which shall state the basis for the determination.

(b) If a small business concern is found to be nonresponsible, the procedures at (FAR) 48 CFR 19.6 and (GSAR) 48 CFR 519.6 must be followed. All documents and reports supporting a determination of responsibility or

nonresponsibility must be placed in the permanent lease file.

570.309 Award.

(a) An award will be made to the responsible offeror whose proposal is most advantageous to the Government considering price and other factors included in the solicitation.

(b) Award will be made in writing within the timeframe specified in the SFO. If an award cannot be made within that time, the contracting officer shall request in writing from each offeror an extension of the acceptance period through a specific date.

(c) Unsuccessful offerors will be notified in writing or electronically within three days after the award.

(d) All proposals received in response to a solicitation may be rejected if the head of the contracting activity or designee determines that such action is in the public interest.

570.310 Debriefings.

(a) Unsuccessful offerors may request a debriefing by the agency, provided that said request is made in writing and is received by the agency within 3 days after the date of which the offeror received notice of the contract award.

(b) The agency shall debrief the offeror to the maximum extent possible within 5 days after the request for the debriefing.

(c) The debriefing shall include, at a minimum:

(1) The agency's evaluation of the significant weak or deficient factors in the offeror's offer;

(2) The overall evaluation cost and technical rating of the successful offer and the offer requesting the debriefing;

(3) The overall ranking of all offers;

(4) A summary of the rationale for the award;

(5) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations and other applicable authorities were followed.

(6) A summary of the debriefing shall be maintained in the contract file.

(d) The debriefing may not include point-by-point comparisons of the debriefed offeror's offer with other offers and may not disclose any information that is exempt from disclosure.

570.311 Inspection.

The space must be inspected to ensure that it is in substantial compliance with the Government's requirements and specifications before acceptance by the contracting officer. The contract file must be documented accordingly.

46. Section 570.502 is amended by adding in the first sentence of paragraph (a) the phrase "which exceed the simplified lease acquisition threshold" immediately after the phrase "Succeeding leases" and by revising paragraphs (b)(1), (b)(2), (b)(3)(ii) and (b)(3)(iii)(B) to read as follows:

570.502 Succeeding leases.

* * * * *

(b) * * *

(1) *Publicizing/Advertising.* The contracting officer shall publish a notice in local newspapers or post a notice on GSA's electronic bulletin board for acquisition programs. The notice should normally

(i) Indicate the Government's lease in expiring.

(ii) Describe the agency's need in terms of type and quality of space,

(iii) Indicate the Government is interested in considering alternative space if economically advantageous,

(iv) Advise prospective offerors that the Government will consider the cost of moving, alterations, etc., when deciding whether it should relocate, and

(v) Provide a contact person for those interested in providing space to the Government.

(2) *Market survey.* A market survey must be conducted in accordance with 570.301.

(3) * * *

(ii) If potential acceptable locations are identified through the advertisement or market survey and relocation costs (including estimated moving costs, telecommunications costs, and the estimated cost of alterations, amortized over the firm term of the lease) will be low enough to allow recovery through a competitive process, the contracting officer should proceed to develop a formal SFO and negotiate with all interested parties in accordance with the procedures in part 570, subpart 570.3.

(iii) * * *

(B) Develop a SFO and negotiate with all interested parties in accordance with the procedures in part 570, subpart 570.3.

47. Section 570.503 is amended by revising paragraphs (a), (b) introductory text and (c) to read as follows:

570.503 Expansion requests.

(a) When the expansion space is within the general scope of the lease, the space may be acquired through a modification to the lease without further justification pursuant to (FAR) 48 CFR 6.3.

(b) When the expansion space needed is outside the general scope of the lease, the contracting officer must determine

whether it is more prudent to provide the expansion space by supplemental agreement to the existing lease or to satisfy the requirement by competitive means. A market survey must be conducted to determine whether suitable alternative locations are available. If the market survey reveals alternate locations that can satisfy the total requirement, a cost benefit analysis must be performed to determine whether it is in the Government's best interest to relocate. This analysis may include—

* * * * *

(c) Unless competitive procedures are used to acquire the expansion space, a justification should be prepared for approval in accordance with (FAR) 48 CFR part 6, subpart 6.3 and part 506, subpart 506.3 except when simplified lease acquisition procedures in 570.2 are used.

48. Section 570.504 is amended by revising paragraph (b) to read as follows:

570.504 Superseding leases.

* * * * *

(b) The justification and approval requirements in (FAR) 48 CFR part 6, subpart 6.3 and part 506, subpart 506.3 must be complied with before negotiating a superseding lease if the amount of the lease, including options, exceeds the simplified leasing acquisition threshold. When the cost is less than or equal to the simplified leasing acquisition threshold, the contracting officer may use simplified procedures outlined in 570.2 and explain the absence of competition in the file.

49. Section 570.505 is amended by revising paragraph (a) to read as follows:

570.505 Lease extensions.

(a) The justification and approval requirements in (FAR) 48 CFR part 6, subpart 6.3 and part 506 subpart 506.3 must be complied with before negotiating a Supplemental Lease Agreement exceeding the simplified leasing acquisition threshold to extend the term of the lease to provide for continued occupancy on a short term basis (usually not to exceed 1 year). For extensions of less than or equal to the simplified leasing acquisition threshold the contracting officer must explain the absence of competition in the contract file.

50. Section 570.602-1 is amended by removing "\$25,000" and substituting "\$100,000" in paragraph (a) and paragraph (b).

51. Section 570.602-2 is amended by removing "\$25,000" and substituting "\$100,000" in paragraph (e)(3) and by

removing "\$25,000" and substituting "\$100,000" in paragraph (g).

52. Subpart 570.7 is revised to read as follows:

Subpart 570.7—Solicitation Provisions and Contract Clauses

570.701 FAR provisions and clauses.

570.702 Solicitation provisions.

570.703 Contract clauses.

570.704 Use of provisions and clauses.

570.701 FAR provisions and clauses.

In addition to including solicitation provisions and contract clauses prescribed in the (GSAR) 48 CFR Chapter 5 provisions and/or clauses substantially the same as the FAR provisions/clauses listed, shall be included in the circumstances indicated.

(a) All solicitations and contracts regardless of the dollar value must include the following provisions/clauses:

FAR (48 CFR part 52) Cite and Title

52.204-3 Taxpayer Identification

52.233-1 Disputes

(b) All solicitations and contracts which exceed \$2,500 must include the FAR clause at 48 CFR 52.222-36, Affirmative Action for Handicapped Workers.

(c) All solicitations and contracts which exceed \$10,000 must include the following provisions/clauses:

FAR (48 CFR part 52) Cite and Title

52.222-21 Certification of Nonsegregated Facilities

52.222-22 Previous Contracts and Compliance Reports

52.222-25 Affirmative Action Compliance

52.222-26 Equal Opportunity

52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans

52.222-37 Employment Reports on Special Disabled and Veterans of the Vietnam Era

(d) All solicitations and contracts which exceed \$25,000 must include the FAR clauses at 48 CFR 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.

(e) All solicitations and contracts which exceed \$100,000 must include the following FAR provision/clauses:

FAR (48 CFR part 52) Cite and Title

52.203-7 Anti-Kickback Procedures

52.203-9 Requirement for Certification of Procurement Integrity—Modification.

52.203-11 Certificate and Disclosure Regarding Payments to Influence Certain Federal Transactions

52.223-5 Certification Regarding a Drug Free Workplace

(f) All solicitations and contracts for actions which exceed the simplified

acquisition threshold for leasing must include the following FAR provisions:

FAR (48 CFR part 52) Cite and Title

52.203-2 Certificate of Independent Price Determination

52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters

52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment

52.215-1 Examination of Records by Comptroller General

52.215-12 Restriction on Disclosure and Use of Data (Solicitations only)

52.219-2 Small Disadvantaged Business Concern Representation

52.219-3 Women-Owned Small Business Representation

52.219-13 Utilization of Women-Owned Small Businesses

52.232-23 Assignment of Claims

52.233-2 Service of Protest (Solicitations only)

(g) All solicitations and contracts which exceed \$500,000 must include the deviations to the FAR clauses at 48 CFR 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, and 52.219-16, Liquidated Damages—Small Business Subcontracting Plan (see 519.708(a) and (b)).

(h) Solicitations which exceed \$1 million must include the FAR provision at 48 CFR 52.222-24, Preaward On-site Equal Opportunity Compliance Review.

(i) When cost or pricing data is required for work or service exceeding \$500,000 the FAR clauses at 48 CFR 52.215-22, Price Reduction for Defective Cost or Pricing Data, and 52.215-24, Subcontractor Cost or Pricing Data, must be included in solicitations and contracts.

(j) When the contracting officer determines that it is desirable to authorize the submission of facsimile proposals the solicitation must include the FAR provision at 48 CFR 52.215-18, Facsimile Proposals.

570.702 Solicitation provisions.

When a solicitation for offers is issued the contracting officer should include provisions substantially the same as the following unless the contracting officer makes a determination that use of one or more of the provisions is not appropriate:

(a) 552.270-1 Preparation of Offers.

(b) 552.270-2 Explanation to Prospective Offerors.

(c) 552.270-3 Late Submissions, Modifications, and Withdrawals of Offers. Alternate I should be used when the contracting officer decides that it is advantageous to the Government to

allow offers to be submitted up to the exact time specified for receipt of best and final offers.

(d) 552.270-4 Historic Preference.

(e) 552.270-5 Lease Award.

(f) 552.270-6 Parties to Execute Lease.

570.703 Contract clauses.

(a) The contracting officer shall insert the following clauses or clauses substantially the same as the following clauses in solicitations and contracts for leasehold interests in real property which exceed the simplified lease acquisition threshold unless the contracting officer makes a determination that use of one or more of the clauses is not appropriate. Use of the clauses is optional for those actions which fall at or below the simplified lease acquisition threshold.

(1) 552.270-10 Definitions (Included if 552.270-28 is used).

(2) 552.270-11 Subletting and assignment.

(3) 552.270-12 Maintenance of Building and Premises—Right of Entry.

(4) 552.270-13 Fire and Casualty Damage.

(5) 552.270-15 Compliance with Applicable Law.

(6) 552.270-16 Inspection—Right of Entry.

(7) 552.270-17 Failure in Performance.

(8) 552.270-18 Successors Bound.

(9) 552.270-19 Alterations.

(10) 552.270-20 Proposals for Adjustment.

(11) 552.270-21 Changes.

(12) 552.270-25 Adjustment for Vacant Premises.

(13) 552.270-27 Delivery and Condition.

(14) 552.270-28 Default in Delivery—Time Extensions.

(17) 552.270-32 Effect of Acceptance and Occupancy.

(18) 552.270-33 Default by Lessor During the Term.

(19) 552.270-34 Subordination, Nondisturbance and Attornment.

(20) 552.270-35 Statement of Lease.

(21) 552.270-36 Substitution of Tenant Agency.

(22) 552.270-37 No Waiver.

(23) 552.270-38 Integrated Agreement.

(24) 552.270-39 Mutuality of Obligation.

(25) 552.270-40 Asbestos and Hazardous Waste Management.

(26) 552.270-41 Acceptance of space.

(b) The contracting officer shall insert the clause at 552.270-22, Liquidated Damages, in solicitations and contracts for leasehold interests in real property

when there is a critical requirement that the delivery date be met and an actual cost cannot be established for the loss to the Government resulting from late delivery.

570.704 Use of provisions and clauses.

The omission of any provision or clause when its prescription requires its use constitutes a deviation which must be approved under part 501, subpart 501.4. Approval may be granted to deviate from provisions or clauses that are mandated by statute (e.g., (GSAR) 48 CFR 552.203-5, Covenant Against Contingent Fees, (FAR) 48 CFR 52.215-1, Examination of Records by the Comptroller General, etc.) in order to modify the language of the provision or clause. However, the statutory provisions and clauses may not be omitted from the SPO unless the statute provides for waiving the requirements of the provision or clause.

53. Section 570.801 is revised to read as follows:

570.801 Standard forms.

Standard Form 2, U.S. Government Lease for Real Property, should be used to award leases unless GSA Form 3626 is used. The reference to the Standard Form 2-A in paragraph 7 must be deleted.

54. Section 570.802 is revised to read as follows:

570.802 GSA forms.

(a) The GSA Form 3626, U.S. Government Lease for Real Property (Short Form), may be used to award leases when the simplified leasing procedures in 570.2 are used or when the Contracting Officer finds its use to be advantageous.

(b) GSA Form 276, Supplemental Lease Agreement, should be used to amend existing leases that involve the acquisition of additional space or partial release of space, revisions in the terms of a lease, restoration settlements, and alterations.

(c) GSA Form 1364, Proposal To Lease Space To The United States of America, may be used to obtain offers from prospective offerors.

Dated: March 27, 1995.

Ida M. Ustad,

Associate Administrator for Acquisition Policy.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies Mr. John Chevedden's petition for rulemaking to specify the license plate mounting location of certain cars and light trucks. NHTSA's analysis of accident data indicates that requiring cars and light trucks with off-center front license plates to have those plates on the driver's side would not have more than a negligible effect on the occurrence of accidents or fatalities.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Van Iderstine, Office of Rulemaking, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Van Iderstine's telephone number is: (202) 366-5275.

SUPPLEMENTARY INFORMATION: By letter dated October 12, 1994, Mr. John Chevedden petitioned the agency to issue a rule applicable to new cars and light trucks with off-center front license plates. Mr. Chevedden asked NHTSA to mandate that those license plates be positioned on the driver's side. Mr. Chevedden stated that the rulemaking was needed because the chances of a vehicle's becoming involved in an accident at night or other times of reduced ambient light increase when the vehicle's headlights are off due to the driver's forgetfulness or to mechanical problems. Mr. Chevedden argued that the chances of such a vehicle's becoming involved in an accident would be reduced if the vehicle's off-center front license plate were mounted on the driver's side. In that location, today's license plates, which typically are reflectorized, would reflect the light from the headlights of oncoming traffic. This would indicate how close the vehicle is to opposing traffic. Mr. Chevedden argued that license plates mounted on the driver's side could also make parked vehicles more visible and lessen the possibility of collisions. Mr. Chevedden did not provide any analysis of the potential benefits of his requested rule.

For the following reasons, NHTSA believes that the safety benefits of

specifying license plate location would be negligible. In attempting to quantify potential benefits of specifying license plate location, NHTSA reviewed the laws of States that mandate both front license plates and reflective license plates and reviewed the numbers and circumstances of fatal accidents that occurred in all states in 1992. The chance of achieving any benefits through mandating the location of front plates would depend on the simultaneous occurrence of a large number of events, several of which have a low probability of occurring even independently, much less in combination. Those events, and their probability of occurring individually in any accident, are set forth below, based on 1992 data:

Fatal accidents in which a vehicle is likely to have a reflective front plate—

.47 or 47 percent

Fatal accidents during non-daylight conditions—

.54 or 54 percent

Fatal accidents involving a head-on or side-swipe collision—

Head-on=.017 or 1.7 percent

Side-swipe=.05 or 5 percent

For a total of .067 or 6.7 percent

Vehicles having a passenger's side offset front license plate assumed to be in fatal accidents—

.01 or 1 percent

Motor vehicles with no front lamps turned on or having complete front lamp failure assumed to be in fatal accidents—

.01 or 1 percent

Fatal accidents involving parked vehicles—

.066 or 6.6 percent

To assess the impact of mandating that offset front license plates be located on the driver's side, the agency determined the probability of all of the above events occurring in the same accident by multiplying the probability of each of the first three events occurring individually in a fatal accident by the product of the probabilities that a fatally involved vehicle has a front passenger's side license plate and that a fatally involved vehicle will have no lights on while being driven. The agency believes that the assumption that 1 percent of vehicles are operated without lights in the dark is very optimistic to the computation of potential benefits.

NHTSA presumes that American drivers tend toward the right lane of the roadway while driving, regardless of the presence or absence of lane markings. Therefore, accidents with parked vehicles generally concern vehicles